IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. NO.5663 of 2004

DATE OF DECISION: 30.11.2006

Gurmit Singh and another

.....Petitioners

versus

The Superintending Canal Officer and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Mr. Sandeep Khunger, Advocate for the Petitioners

Mr.C.M. Munjal, Sr. Addl. AG, Punjab

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JUDGMENT:

The petitioners have impugned the orders-Annexures P-3 and P-4 passed by the Divisional Canal Officer, Faridkot Canal Division, Faridkot and Superintending Canal Officer, Sirhind Canal Circle, Ludhiana, by which the water course has been ordered to be restored under Section 33-FF of the Northern India Canal & Drainage Act, 1873 (for short the 'Canal Act')

Learned counsel for the petitioners contends that although the water course was left by the Consolidation authorities during the consolidation proceedings, yet it has never run. It is contended that respondents No.1 and 2 have ordered for restoration of water course without resorting to the provisions of Sections 30-A and 30-B of the Canal Act. Counsel for the petitioners has relied on the judgment of in **Sajjan Singh vs. Mukand Singh and others, 1980 P.L.J. 283**.

From a perusal of the judgment passed in Sajjan Singh's case (supra), it is clear that restoration of demolished water course can only be ordered under the provisions of Section 30-FF of the Canal Act, whereas, the excavation of the water course which has been provided during consolidation proceedings, can be ordered under the provisions of Sections 30-A and 30-B of the Canal Act. As the present case relates to excavation of a Khal, therefore, the authorities ought to have passed their orders under the provisions of Sections 30-A and 30-B of the Canal Act and not under Section 30-FF, which relates to restoration of demolished water course.

In view of the above, we set aside the orders, Annexures P-3 and P-4 passed by respondents No.2 and 1, respectively and remand the case back to respondent No.2 i.e. Divisional Canal Officer, Faridkot Canal Division, Faridkot. The parties shall appear before respondent No.2 on 04.01.2007.

(ASHUTOSH MOHUNTA)
JUDGE

November 30, 2006
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(NIRMAL YADAV)
JUDGE